IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.08.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.Nos.14369 of 1999 & 8022 of 2000
WPMP.No.20798 of 1999

1. Union of India rep. by its
   General Manager
   Southern Railway
   Chennai 600 003.

2. The Controller of Stores
   Southern Railway
   Ayanavaram, Chennai.

3. The District Controller of Stores
   General Stores Depot
   Southern Railway
   Ayanavaram, Chennai.

..Petitioners in both Wps.

vs.

1. J. Hayath Basha
2. S. Sekar
3. G. Sekar (WP.14369/99) & C.Sekar (WP 8022/00)
4. K.R. Pushpakaran
5. K. Muralidharan (R7 in WP 8022/00)
6. V. Daveedue (R5 in WP 8022/00)
7. P. Balasubramanian (R6 in do)
8. S. Vayaputhiran
9. P. Ramasamy
10. P. Sekar
11. M. Basheer
12. K. Narayanan
13. S. Subha
14. K. Mohan
15. R. Ganesan
16. J. Sundaramurthy
17. K. Babu
18. S. Devaraj

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19.P.N. Kumar
20.L. Nandakumar (D.Nandakumar, in WP 8022/00)
21.S.A. Jeelani
22.J. Gopi .. Respondents 1 to 22 in both the writ petitions.

23.Central Administrative Tribunal
Chennai. ..R.23 in WP.No.14369/1999

24.The Presiding Officer
Central Government Labour Court
Chennai.
..R.23 in WP.No.8022/2000

W.P.No.14369/99:-

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records from the file of the respondents and quash the order made in OA 73/99 dated 30.7.99.

W.P.8022/2000:-

Petitions calling for the records from the file of the presiding Officer, Central Govt Labour Court, Chennai in C.P.No.18 of 1995 dated 9.11.99 and quash the same.

For petitioners : Mr. V.G. Sureshkumar
in both Wps.,

For respondents 1: Ms. D. Geetha
to 22 in both Wps.

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COMMON ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order dated 30.07.1999 made in O.A.No.73 of 1999 on the file of Central Administrative Tribunal, Madras Bench, Southern Railway Administration has filed W.P.No.14369 of 1999. The very same petitioners, questioning the order dated 09.11.1999 made in C.P.No.18 of 1995 on the file of Central Government Labour Court, Chennai has filed W.P.No.8022 of 2000.

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2. Since the issues raised in both the writ petitions are interconnected, they are being disposed of by the following common order.

3. Heard Mr. V.G. Sureshkumar, learned counsel appearing for the petitioners / Railway Administration and Ms. D. Geetha, learned counsel appearing for respondents 1 to 22.

4. According to respondents 1 to 22, they entered into service in the Southern Railway as Tailors for stitching uniforms for Railway employees. They joined the Union, by name, Socialistic Workers Union in January, 1986 for better bargaining powers and for claiming regularisation of their service and also for other benefits. It is their claim that on receipt of their charter of demands dated 29.09.1986, the Railway Administration issued an order, terminating all the 35 workers with effect from 20.12.1986. It is also their claim that they were continuously serving as piece-rate Tailors in the Railways and without following the provisions of Indian Railway Establishment Manual as well as Industrial Disputes Act, 1947 (in short "I.D. Act"), the Railway Administration terminated their services; hence, they raised an industrial dispute challenging the order of termination in I.D.No.52 of 1988 before the Industrial Tribunal, Madras. By order dated 03.11.1989, the Tribunal, passed an award holding that there was no Master and Servant relationship between the applicants and the Railway Administration.

5. Against the said award, the applicants preferred Original Application before the Central Administrative Tribunal, Madras Bench in O.A.No.469 of 1990. By order dated 10.12.1991, after finding that there was Employer and Employee relationship, the Central Administrative Tribunal, set aside the award of the Industrial Tribunal dated 03.11.1989 and remitted the matter back to the Industrial Tribunal with a direction to consider whether the Railway Administration had violated Section 25-F and 25-N of I.D. Act. After remand, fresh evidence were let in by both parties. The Industrial Tribunal passed an award on 15.04.1994, holding that there is violation of Section 25-F and 25-N of I.D. Act. The Tribunal also concluded that there exists the relationship of Employer and Employees and the termination of services of the workmen is not justified and issued direction for reinstating them into service without backwages.

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6. The said award of the Industrial Tribunal was challenged by the Railway Administration as well as by the applicants by way of writ petitions before this Court. Learned single Judge of this Court by order dated 01.08.1997, dismissed the writ petitions, confirming the award of Industrial Tribunal in I.D.No.52 of 1988. Against that, the Railway Administration preferred W.A.No.1191 of 1997 and the same was dismissed at the time of admission itself on 25.09.1997. The Railway Administration also preferred a Special Leave Petition before the Supreme Court and the same was also dismissed on 23.02.1998. Even thereafter, for the legal notices dated 2.3.1998 and 12.03.1998 issued by the respondents herein seeking to reinstate them into service, the Railway Administration did not respond. Later, though the workmen were called for work, the Railway Administration insisted that they should sign the contract and thereafter only they would be reinstated and also insisted them to bring their own sewing machines. This was objected to by the workmen. At this stage, the workmen preferred O.A.No.73 of 1999 before the Central Administrative Tribunal, Madras Bench. For non payment of wages, they also approached the Labour Court in C.P.No.18 of 1995.

7. The Tribunal in view of its earlier factual finding that there exists Employer-Employee relationship, directed the Railway Administration to find out the method by which the workmen can be taken into service or to reinstate them into service. Further, in the light of the fact that the workman had been kept out of service from 1986 and in order to give a quietus to the long legal battle, the Tribunal, directed the Railway Administration to take all the workmen/applicants back to service before 15.08.1999. Keeping the above position in mind, the Tribunal also directed the Railway Administration to frame a Scheme within three months from the date of receipt of copy of the order and disposed of the application on the above terms. Though the order was passed as early as on 13.07.1999, it is unfortunate that even after six years, the Railway Administration has not taken effective steps for reinstating the workmen, providing necessary work to them.

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8. When the matter came up for hearing before us, in the light of the factual finding rendered by the Tribunal, viz., existence of Employer-Employee relationship, this Court expressed in clear terms that the said factual finding cannot be disturbed or interfered with. Mr. V.G. Sureshkumar, learned counsel appearing for the Railway Administration, on instruction,

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submitted a memo conveying that the Railway Administration has evolved a Scheme for appointment of 22 piece rate Tailors as substituted Group "D" staff in the scale of pay of Rs.2,250-3,200 subject to the following terms.

> "1. Those who have worked more than 180 days on piece rate contract during 1984 to 1986 will be considered for substitute appointment.
>
> 2. They will be considered for the post of Group D substitute service in scale Rs.2550-3200.
>
> 3. Those who are 45 years and below will be considered for the regular appointment.
>
> 4. Their appointment is subject to their being declared medically fit in BEE ONE category by the medical authorities of Railways.
>
> 5. Their minimum educational qualification should be 8th Std. Pass.
>
> 6. They will be screened by a Committee of officers for suitability.
>
> 7. They will be absorbed and posted anywhere in southern Railway against the existing vacancies.
>
> 8. They will come under New Pension Scheme.
>
> 9. They will be governed by all extant rules as applicable.
>
> 10. The above absorption is subject to non-payment of back wages. "

9. The learned counsel appearing for the respondents by drawing our attention to continuous employment of respondents herein as Tailors by stitching uniforms, long legal battle and factual finding of the Industrial Tribunal and Central Administrative Tribunal, submitted that certain conditions, particularly, treating the workmen as new entrants cannot be accepted. She also submitted that even the minimum qualification of 8th Standard was brought in Railways only from 1998. She also pointed out that in the light of the award of the Industrial Tribunal and the order of the Central Administrative Tribunal, there is no question of screening the workmen by the Committee of Officers for suitability. She further submitted that the Railway Administration is not justified in disowning the responsibility to pay backwages.

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10. In the light of the orders of the Industrial Tribunal and the Central Administrative Tribunal as well as the admitted factual details, we have carefully considered the terms and conditions agreed by the Railway Administration. As rightly pointed out by the learned counsel for respondents/workmen, some of the conditions are unacceptable. Since the respondents are having favorable award / order of two Tribunals, as rightly said, they cannot be treated as new entrants. Even in 1999, in order to give a quietus to the legal battle, though the Tribunal expressed a valuable suggestion to evolve an acceptable Scheme, for the last six years the Railway Administration has not taken effective steps on the ground of pendency of these two writ petitions. Even before us, at the request of Railway Administration, we have granted sufficient time to bring forward a reasonable and acceptable Scheme. In view of the attitude on the part of the Railway Administration and considering the grievance of the workmen, we are of the view that ends of justice would be met by framing the following Scheme, which shall be implemented by the Railway Administration.

"1. Those who have worked more than 180 days on piece- rate contract during the period from 1984 to 1986 will be considered for substituted appointment.

2. They will be considered for the post of Group "D" substituted service in the scale Rs.2550-3200. Their services will be considered as regular service from the date of award i.e., 15.04.1994 for all benefits.

3. Their appointment is subject to their being declared medically fit by the medical officer of the Railways.

4. They will be absorbed / posted anywhere in Southern Railway against the existing vacancies.

5. They will be governed under the Pension Scheme prevailing on the date of award i.e., 15.04.1994.

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6. They will be governed by all existing rules.

7. The above absorption is subject to payment of backwages on the following terms:

(a) persons in the age group of 41-44 = 25% of the eligible backwages.

(b) persons in the age group of 45-49 = 50% of the eligible backwages.

(c) persons in the age group of 50-55 = 75% of the eligible backwages.

(d) It is stated that as on date three persons reported dead. Their legal heirs (subject to production of certificate from the competent authority) are to be paid 100% backwages.

The Railway Administration is directed to implement the above Scheme within a period of eight weeks from the date of receipt of copy of this order.

Both the writ petitions are disposed of on the above terms. No costs. Consequently, connected WPMP., is closed.

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Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Registrar, Central Administrative Tribunal, Chennai.
2.The Presiding Officer, Central Government Labour Court, Chennai.

+ 2 ccs to Mr.V.G.Suresh kumar, Advocate SR No.35242
+ 2 ccs to M/s D.Geetha, Advocate SR No.35157

Common Order in
MAB(CO) W.P.Nos.14369/99&8022/2000
SR/23.8.2005

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